IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Madan Singh Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.472/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 4-3-2002 in Sessions Case No.193/2001 passed by Sh. K.L. Yadav, RHJS, Additional Sessions Judge (Fast Track) No.2, Bharatpur.

Date of Judgment: November 03, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE CHATRA RAM JAT

Mr. Biri Singh Sinsinwar] for the appellant.
Mr. Mukesh Verma]

Mr. R.P.Kuldeep, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Madan Singh, the appellant herein, was put to trial for having committed murder of Nirma. Learned Additional Sessions Judge (Fast Track) No.2 Bharatpur, vide judgment dated March 4, 2002 found the appellant guilty and convicted and sentenced him under section 302 IPC to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer imprisonment for one month.

2. It is the prosecution case that informant Binda (Pw.4) on October 15, 2000 submitted a written report at Police Station Bhusawar stating therein that on the said day around 9 AM while his wife Nirma was returning from the field carrying fodder along with her younger sisters Gopali and Vimla, the appellant, who was hiding near the well of Devi

Ram, infliced axe-blow on the head of Nirma and cut her neck due to which she died on spot. On being informed by Mohan and Mukesh, he reached on the spot and found his wife dead. On that report a case under section 302 IPC was registered and investigation commenced. Dead body of Nirma was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, the appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Bharatpur. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence and took the plea of alibi. Three witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the contentions raised before us and with the assistance of learned counsel perused the record.

4. Death of Nirma was concededly homicidal in nature. As per post mortem report (Ex.P-16) following ante mortem injuries were found on the dead body:-

> 1. Incised wound 4 inch long x 1 inch breadth x muscle deep, in Lt. supra clavicular fosea, oblique in direction, margins are clear cut regular & well defined clotted blood with hematoma scattered on wound surroundings. Large blood vessels carotid vessels and subsclavian vessels are sharply cut.
> 2. Incised wound 4 inch long x ¾ inch breadth x cranial cavity deep, over Rt. parietal region of skull, oblique in direction. Margins are clear cut regular & well defined. Scalp hair found cut near the wound clotted blood & fresh clotted blood present

over & in surroundings of wound.

The cause of death was acute hemorrhagic shock as a result of injuries to skull, brain & large blood vessels.

5. The prosecution case is founded on the testimony of Vimla (Pw.1), Gopali (Pw.2) and Santa (Pw.3). In her deposition Vimla (Pw.1) stated that on the day of incident around 9 am while she along with Gopali, Santa and Nirma (since deceased) was returning from Har (pasture) carrying fodder, the appellant, who was hiding near the well of Devi Ram, inflicted axe-blow on the head of Nirma due to which her neck was cut and blood oozed out. After causing injury appellant fled away. She also stated that prior to this incident the appellant made attempt to commit theft in the house of Nirma, she woke up, raised alarm and beat appellant with Chappal. It was because of this reason that the incident occurred. The testimony of Vimla gets corroboration from the evidence of Gopali (Pw.2) and Santa (Pw.3).

6. Manoj Kumar Gupta Investigating Officer (Pw.18) in his deposition stated that on receiving information about the incident on October 15, 2000 he conducted investigation of the case and arrested appellant vide arrest memo (Ex.P-18). On the basis of his disclosure statement (Ex.P-23) he recovered blood stained axe from his residential Pator (room) vide recovery memo (Ex.P-14). The recovery of axe was effected in presence of Ram Niwas (Pw.13) and Dhanphool (Pw.15). The axe and other incriminating articles were sent for examination to FSL.

7. Learned counsel for the appellant criticised the impugned judgment and canvassed that the witnesses who have been relied upon by the

learned trial court are close relatives of the deceased and because of their unnatural conduct i.e. they ran away at the time incident instead of saving the deceased and not making effort to save her, their presence, is doubtful at the time of incident. Learned counsel further contended that the appellant was at the house of his in-laws from October 14, 2000 to October 16, 2000 and he was not present in the village on the date of incident. According to learned counsel, the conduct of witnesses was quite unnatural. Learned counsel took us through the contradictions in the evidence of prosecution witnesses and urged that no reliance could be placed on such shattered testimony. Per contra learned Public Prosecutor supported the impugned judgment and contended that presence of sisters of the deceased at the time of incident is established and in their cross examination nothing favourable to the appellant could be extricated and only because of the fact that they are close relatives of the deceased, their testimony could not be discarded.

8. It is well settled that when ocular evidence is cogent, credible and trustworthy, minor variance, if any, is not of any consequence. Eye witnesses account would require a careful independent assessment and evaluation for its credibility. The evidence must be tested for its inherent consistency and inherent probability of the story.

9. Their Lordships of the Supreme Court in Din Dayal Vs. Raj Kumar @ Raju (AIR 1999 SC 537) held as under:- (Para 4)

> "Witness Din Dayal had accompanied the deceased to the hospital but after reaching there he did not disclose the name of the accused to the Police Constable who was on duty even though he disclosed other facts regarding the incident. This circumstance has been relied upon by the High Court together with some other reasons for doubting truthfulness of the

evidence of this witness. The High Court has also referred to the improvements made by Din Dayal and those improvements clearly indicate that they were deliberately made with a view to make the presence of other witnesses acceptable. Having gone through the evidence we find that the view taken by the High Court is not unreasonable and no interference is called for by this Court."

10. In Shankar Lal Vs. State of Rajasthan (AIR 2004 SC 3559) the Hon'ble Supreme Court held as under:- (Para 5)

"Even according to the prosecution the only witness to the incident in question is PW-6 therefore as contended by learned counsel for the appellant we will have to examine his evidence carefully. If we do so then we notice that on the date of incident he had gone to a village upli for some work. From there he came back by bus at about 11 O' clock. He then allegedly went to the village to meet Ram Rakh where he was told by his wife that the latter had gone to the field. It is the prosecution case itself that the distance between the field of Ram Rakh and the village is about 4-5 miles and PW-6 covered that distance on foot and when he reached near the field of Ram Rakh he heard a quarrel and when he went towards the place of quarrel he saw the appellant attack the deceased with an axe. It is his further case that when he reached near the deceased the appellant ran away. It is at this point of time he states that he got scared and he took a different route than the one he took on the way and reached the village at about 4 or 4.15 p.m. It is his case that when he went to the house of Ram Rakh he could not find him therefore he came near the village square where he met PW-2 Khyali Ram. From the above evidence of PW-6 it is apparent that though there were persons available on his way back, he did not inform anybody about the incident. Even when he reached the village and met Ram Rakh's wife he did not inform her about the incident and it is for the first time he informs about this incident to PW-2 at the village square at about 4.15 p.m. Contrary to what he stated in the examination in chief that he saw only one assault on the deceased, in the cross examination he stated that he saw the appellant attack the deceased twice and both the injuries were caused in his presence. It is also to be

> noticed from his cross examination that when he met PW-2 Kyali Ram and told him about the incident in question but PW-2 supposedly told him that he had already come to know of the incident from PW-14. The prosecution has not found how PW-14 came to know of the incident. IN this background if we appreciate the evidence of PW-6 we notice that he is purely a chance witness whose presence at the place of incident is highly doubtful. His conduct too seems to be unnatural in not informing anyone else in the village until he met Kyali Ram at the village square. We also notice that there is unexplained delay in filing the complaint inasmuch as according to the prosecution the incident in question took place at about 1.30 p.m. and a complaint was lodged only at 3.15 a.m. On 5-4-1980. Though the distance is about 30 miles from the place of incident, the complainant had the facility of using the tractors available in the village and they did use the same for for travelling to the Police Station. In such circumstances this unexplained long delay also creates a doubt in our mind as to the genuineness of the prosecution case. Once we are not convinced with the evidence of PW-6 then there is no other material to base a conviction on the appellant hence we are of the opinion that the appellant is entitled to the benefit of doubt therefore this appeal succeeds and is allowed. The judgment and order of conviction of the 2 Courts below are set aside. The appellant is acquitted of the charge framed against him. From the records we notice that the appellant is on bail. If so his bail bonds shall stand discharged."

11. State of Punjab Vs. Sucha Singh (2003 Cri.L.J.1210) was the case where accused alleged to have killed deceased to avenge murder of his nephew. Eye witness father of deceased not tried to rescue his son, who sustained as many as 24 injuries. Such conduct of witness make his presence doubtful. Other eye witness did not own land in village and his presence at the place of occurrence was held doubtful. Contradiction between ocular and medical evidence as to number of injuries on deceased also make their presence doubtful. It was indicated as under:- (Para 10)

"PW-4 in his testimony before the Court stated that the accused also caused more injuries with their respective weapons on Sarabjit Singh. This witness was confronted with his statement recorded under section 161 CrPC where he has not stated. Apart from discrepancy between ocular and medical evidence with regard to the injuries sustained by the deceased Sarabjit Singh on his body, the fact that the deceased suffered as many as 24 bodily injuries makes all the more doubtful the presence of Pws4 and 5 at the place of occurrence. Inflicting 24 injuries on the body of deceased by the three accused persons would require a considerable amount of time. This itself suggests that the accused had sufficient time at their disposal to commit the crime. Any father, worth the name, would not remain a mute spectator when his son is being inflicted as many as 24 injuries at his very nose."

12. In Krishna Ram Vs. State of Rajasthan (AIR 1993 SC 1386) the Hon'ble Supreme Court held as under:- (Para 4)

"We have gone through the evidence of the eye witnesses. No doubt Pws 1,2,3 and 6 are kith and kin of the deceased but they have given a truthful version of the whole occurrence. Even Ex.P-1 all the material particulars are mentioned particularly the fact that the deceased was dragged to the house of A-1 and that there he was tied and beaten. As noted already even A-1 admitted that the deceased was tied in his house but added that because of the scuffle between PW.6 and the deceased, latter was tied. Immediately after registering the crime, the SHO went to the house of A-1 and found the deceased tied and he was having bleeding injuries. Thus the time, place of occurrence and the cause of death are established beyond doubt. So far as the presence and participation of the appellants are concerned there are statements of the eye-witnesses consistently to this effect. Both the Courts below have given cogent and convincing reasons for accepting the evidence of the eye witnesses. The evidence adduced in defence is not at all material and the courts below have rightly rejected the same. The trial court acquitted Keshra Ram A-6 giving the benefit of doubt. In our view the same in any manner does not affect the evidence of eye

> witnesses who are the most natural witnesses. We see absolutely no merits in these appeals. The appeals are dismissed accordingly."

13. In Chanan Singh Vs. State of Haryana (AIR 1971 SC 1554) the evidence of sole witness to the occurrence was disbelieved on ground of his abnormal conduct after the occurrence. It was held:- (para 13)

> "The conduct of the witness in running away from the place of occurrence even though he was not chased or threatened by any one of the assailants and his not reporting the incident even to the relatives of either of the two deceased persons was treated as abnormal."

14. In Ram Lakhan Vs. State of UP (AIR 1996 SC 3429) held that the evidence of close relatives of deceased is not liable to be rejected on ground of interested witnesses. What is necessary is that Court should scrutinise evidence of such witness carefully.

15. In Baitullah Vs. State of UP (AIR 1997 SC 3946) Hon'ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits and rope in innocent persons.

16. In Tapubha Bhagwanji Vs. State of Gujarat (AIR 2002 SC 2794) the Apex Court held as under:- (Para 12)

> "The witnesses examined on behalf of the prosecution are witnesses who in normal course of event are expected to know about the incident. Their deposition do not reveal any good reason for rejecting their evidence as untrustworthy or unreliable. Nothing has been brought on record either in cross examination of the witnesses concerned or in any other evidence

> to show any good reason as to why they should falsely implicate the accused in the case. Thus rejection of their testimony on ground that they are interested witnesses being in relation of deceased, not proper."

17. In Angnoo Vs. State of UP (AIR 1971 SC 296) the Apex court held that the fact of relationship would add to value of his evidence because he would be interested in getting the real culprit, rather than innocent persons, punished.

18. In Bolineedi Venkataramaiah Vs. State of Andhra Pradesh (AIR 1994 SC 76) the Apex Court considered the case where there was bitter enmity between prosecution party and accused party, group of persons chased deceased and inflicted injuries. The presence of witnesses at place of occurrence was not found doubtful. It was held that being interested witnesses their evidence was subjected to greater scrutiny. Specific overt acts attributed to accused. Corroboration of overt acts by medical and circumstantial evidence was found. Only those accused to whom specific overt acts had been attributed consistently by all witnesses were convicted. The plea that some of the accused were acquitted, the same evidence cannot be accepted against other accused, was not found tenable.

19. In Suraj Pal Vs. State of UP (AIR 1994 SC 748) the Apex court found that the medical evidence fully establish the injury to eye witnesses, eye witnesses gave consistent version and it was held that their evidence cannot be discarded on ground that they were interested witnesses or that co-accused was acquitted on self-same evidence or that there were minor variations.

20. In Balkar Singh Vs. State of Punjab (AIR 1994 SC 1133) where the witness deposed against accused but he did not state about the weapon used, particulars of injuries and no overt act of violence proved against accused. The Apex Court held that mere presence of accused on the spot cannot make him liable for the offence.

21. In Ram Gopal Vs. State of Rajasthan [RLW 1999(1) SC 58] where the venue of the incident and time was such that no independent witness could be expected to be present the evidence of related witnesses was considered.

The fact of absence of details of occurrence in FIR, which are consistent with the detailed narration of the eye witnesses in the evidence, was considered and held that the FIR cannot be rejected.

22. In Hukam Singh Vs. State of Rajasthan (2000(4) Crimes 23) the Apex Court held that it is the discretion of Public Prosecutor not to examine any certain witness if he got reliable information that a category of witness would not support prosecution version and he is free to skip that witness.

23. In Suresh Raj Vs. State of Bihar JT 2000(4) SC 12 where name of assailant was not disclosed in the information nor the name of informant was disclosed and the absence of injuries on person of eye witnesses was considered and held that the conduct of three eye witnesses was highly unbelievable and their presence is doubtful. Investigation was found tainted and this was because of enmity.

24. In Kartik Malhar Vs. State of Bihar (1995)8 JT (SC) 425, the Apex Court held that “we may also observe that the ground that the witness

being a close relative and consequently being partisan witness should not be relied upon, has no substance. This theory was repelled by this court as early as in Dalip Singh's case (AIR 1953 SC 364) in which this court expressed its surprise over the impression which prevailed in the minds of the members of the bar that relatives were not independent witness Speaking through VIVIAN BOSE J., the Court observed para 25 of AIR 1953 SC):

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the facts of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur."

25. Bearing the principles indicated in the afore quoted judicial pronouncements, we proceed to consider the evidence adduced at the trial. We find that Vimla, Gopali and Santa are close relatives of the deceased and therefore we have carefully scrutinised their testimony. We do not see any good reason to hold that their evidence is untrustworthy or unreliable as nothing has been brought on record either in cross examination of these witnesses or in any other evidence to show any good reason as to why they should falsely implicate the appellant in this case. While these sisters were returning from the field, the deceased was attacked by appellant. They have also disclosed the reason as to why the appellant attacked on deceased that the deceased failed the attempt of appellant of committing theft. Testimony of these witnesses despite searching cross examination could not be shattered.

26. Having analysed the evidence of Vimla, Gopali and Santa from the point of view of trustworthiness, we find their presence natural at the

time of incident. Even if it is assumed that they are close relative of the deceased, their evidence is not liable to be discarded on that score because it otherwise inspires confidence. They had no interest in protecting the real culprit and falsely implicating the appellant. In the case of interested witnesses the rule of scrutiny is merely a rule of caution rather than a rule of law. Testimony of the eye witnesses, who are the natural witnesses of the occurrence and when one would expect to have seen the occurrence, cannot be doubted only because they happen to be relatives of the deceased. We find them reliable and trustworthy and we are of the considered opinion that the charge under section 302 IPC is established against the appellant beyond reasonable doubt. We do not see any infirmity in the impugned judgment of learned trial Judge.

27. For these reasons, we do not find any merit in the instant appeal and the same stands dismissed. The conviction and sentence of the appellant under section 302 IPC are confirmed.

(Chatra Ram Jat),J. (Shiv Kumar Sharma)J.

arn/